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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/524,310 | 03/14/2000 | Lennart Braberg | KRNOS-009XX | 8521 |
| 207 | 7590 | 10/20/2004 | EXAMINER | |
| WEINGARTEN, SCHURGIN, GAGNEBIN & LBOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109 | | | JASMIN, LYNDIA C | |
| | | | ART UNIT | PAPER NUMBER |

3627

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/524,310

Applicant(s)

BRABERG ET AL.

Examiner

Lynda Jasmin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-28,30-33,35,36 and 61-65 is/are pending in the application.
- 4a) Of the above claim(s) 64 and 65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-28,30-33,35,36 and 61-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Amendment received June 24, 2004 have been acknowledged.

Election/Restrictions

2. Newly submitted claims 64 and 65 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Newly submitted claims 64 and 65 are subcombination of the invention previously claimed. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the calculating of employee's compensation does not rely upon the specific details of the identifying an earliest transaction from among identified transaction for its patentability. The subcombination has separate utility such as to monitor hours worked, tardiness and/ or overtime.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 64 and 65 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-7, 9-20, 26-29, 31-33, 35 and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Kahn et al. (6,401,079 B1).

Kahn et al. discloses a method for calculating an employee's compensation, including, in a processor (via application server 20), associating sets of attributes (via pay rate type, job classification) with pay categories (employee's payroll groups: salaried, hourly employees), associating a compensation qualifier (via standard pay rate with multiplier and/or increment see fields 3895 3915) with each pay category (col. 37, lines 29-48), forming one or more completed shifts (via the payroll information for employer-defined payroll group), responsive to identified transactions (which inherently include punch information) (via specifying an autopay schedule, as illustrated in the autopay schedule for full time employee) and the employee's schedule (such as number of hours per workday; col. 36. lines 60-67), splitting the employee's shifts into sub-shifts (earnings broken out by types as for example overtime) responsive to work parameters (apply rules via Rules data 120), and for each subshift determining a set of attributes (such as non-exempt limits) for the sub-shift (for each overtime hours), determining and

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assigning a pay category with, which the set of attributes is associated, to the sub-shift (col. 14, lines 34-39), and determining compensation for the employee for the subshift, responsive to the assigned pay category, the employee's base pay and a compensation qualifier associated with the pay category (col. 14, lines 64-67). Each set of attributes is a unique combination of attributes (as illustrated in the payroll information). The work parameters (via apply rules) include at least one of workplace rules (col. 16, lines 29-31), scheduled time, holiday calendars, dates and times of the shift (via the autopay schedules and holidays).

Kahn et al. further discloses creating a mapping which maps each set of attributes to at least one pay category (via pay rates and pay scales for particular job classifications), and determining the at least one pay category with which the set of attributes is associated is responsive to the mapping (col. 42, lines 12-37). This mapping is configurable by a user (the employer). Kahn et al. further discloses determining a total compensation for an employee for a pay period by adding the amounts determined for each subshift of the pay period (via the payroll information col. 41, lines 23-33). The plural compensation qualifiers are associated with a pay category, each compensation qualifier being in effect for a different time of day (via pay multiplier or added increments). Kahn et al further discloses the compensation qualifier including a bonus time, such that determining compensation for the employee for the sub-shift comprises awarding the employee the bonus time (via a on time payments to employees col. 37, lines 9-14).

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Kahn et al. further discloses a threshold for a first pay category (via standard pay rate) and defining an overflow pay category (via adjusting the standard pay rate) and calculating, for a given period (daily, weekly or bi-weekly), a total time awarded to the first pay category, and if the total time awarded to the first pay category exceeds the threshold, transferring the excess awarded time to the overflow pay category (by calculating overtime, double time, non-overtime, standard, time-and-a-half and employment defined rates, for high risk job which are used to generate payroll information).

Kahn et al. further discloses that employee's actual compensation is calculated based on actual attendance and applicable compensation rules (by calculating total hours worked, regular hours worked and calculating overtime as illustrated in Figure 41 (a and b)).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21-25 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahn et al.

Kahn et al. does not explicitly disclose calculating compensation based on actual attendance collected from punch information with any or all of IN/OUT information, timestamps and break indications collected by a reader or biometrics device.

However, the payroll information system of Kahn et al. discloses timesheet details for each employee along with day, date, earnings pay rate hours and note of events for an approved timesheet. Kahn et al. further discloses an autopay schedule including a specified number of hours per workday and can be used for an employee will a fixed working schedule. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the payroll information for each employee taught by Kahn et al. with punch information in order to provide employer with an accurate employee's attendance. As per using reader or biometrics device, these devices are common and well-known devices used in monitoring employees clocking in and out and the Examiner takes Official Notice as such.

7. Claims 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahn et al., in view of Wynn et al. (5,717,867).

Kahn discloses all the structural elements of claimed invention, however fails to explicitly disclose identifying an earliest transaction from among the identified transactions, qualifying one or more shifts and selecting a shift from the qualified shifts.

Wynn discloses the concept of determining and approving overtime worked, job changes, and different work zone assigned based on the time clock by each employee that automatically send the information to a computerized system to generate accounting records. Wynn further discloses determining hours data structure based on

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information from the time clocks stored in a clock scan data structure. From this teaching of Wynn, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the autopay scheduling system of Kahn et al. to include the time clock system to qualify one or more shift such as overtime, change job or special department work as taught by Wynn et al. in order to facilitate and determine different hourly wage.

Response to Arguments

8. Applicant's arguments filed June 24, 2004 have been fully considered but they are not persuasive. Applicants argue the rejection to claims 1-7, 9-20, 26-29, 31-33 and 35-36 under section 102 are unwarranted and should be withdrawn. The Examiner respectfully disagrees. The added limitation as claimed that the identified transactions include collected punch information is inherent. It is the Examiner's position that it does not change the step of forming one or more completed shifts (e.g. the way that the data is collected does not functionally relate to the step in the method).

Applicants further argue the rejections of the claims 21-25 and 30 under 35 U.S.C 103(a) are unwarranted and should be withdrawn. The Examiner respectfully disagrees. It is noted that the Official Notice statement(s) taken by the Examiner in the previous Office Action and admitted to be prior art, since Applicants did not seasonably traverse the Official Notice statement is well known as evidence by the US patent to Green (4,937,599) that punch in and out using card reader or swipe action are well known in the art in order to generate hours worked, tardiness, overtime etc.

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Contemporary time clocks perform many functions in addition to providing a record of the times at which employees punch in and out. Generally, the hours worked, tardiness, overtime, etc. are developed as a result of the time clock entries and provided in a format compatible with the employer's computer system. Some information is displayed at the time clock, while other information *is recorded in a form to facilitate its use in the data processing system of the employer.*

Applicants further argue on pages 17-19 "that Applicants' system can automatically determine the compensation for an employee, and/or automatically making shift assignment." The Examiner notes that these features that Applicants rely upon are not claimed to the extent argued. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's argument having been found unpersuasive, the rejection has not been withdrawn.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Green discloses a time clock system.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

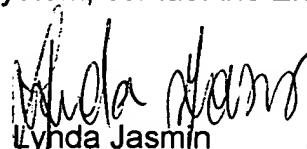
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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda Jasmin whose telephone number is (703) 305-0465. The examiner can normally be reached on Monday- Friday (8:00-5:30) alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lynda Jasmin
Primary Examiner
Art Unit 3627

10/13/04

lj